

Testimony of Alex Tsarkov Before the Judiciary Committee on Senate Bill 259, An Act Concerning the Recommendations of the Connecticut Sentencing Commission Regarding the Enhanced Penalty for the Sale or Possession of Drugs Near School, Day Care Centers and Public Housing Projects.

Senator Coleman, Representative Fox, Senator Kissel, Representative Rebimbas, and members of the Judiciary Committee. I would like to thank the committee for raising SB 259, AN ACT CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT SENTENCING COMMISSION REGARDING THE ENHANCED PENALTY FOR THE SALE OR POSSESSION OF DRUGS NEAR SCHOOLS, DAY CARE CENTERS AND PUBLIC HOUSING PROJECTS.

In 2012, I had an opportunity to serve on the Connecticut Sentencing Commission working group that was formed to examine the “drug free zone statutes” in our state. The working group that included members of the Division of Criminal Justice and the Division of Public Defender Services came up with a consensus proposal that was later adopted by the Legislative Subcommittee of the Commission as well as the full Sentencing Commission. The proposal has been considered during the 2013 Legislative Session and is now before you again.

Much has been said over the years on the lack of efficacy of the 1,500 foot drug free zones around public and private elementary and secondary schools, public housing projects, and licensed child day care centers. SB 259 would reduce the state’s drug-free zones from 1,500 feet to 200 feet, and I fully support this effort to make more sense out of the state’s drug free zone statutes.

I would like to focus my remarks on lines 74-85 of the bill that I believe have been misunderstood at times during the past debates on this proposal. This provision of the bill codifies what is already case law in Connecticut by amending §21a-278a(b) to clarify that a person who violates the statute must possess the intent to commit the violation in a specific location.

§21a-278a(b) could be interpreted to mean that the state has to prove mere possession of narcotics within 1,500 feet of a proscribed area, regardless of where the defendant intended to sell the narcotics. Another reasonable interpretation, and the correct one, is that the state needs to prove that not only the possession, but also the intended sales were within 1,500 feet of a proscribed area.

The Connecticut Supreme Court has interpreted §21a-278a(b) and held that the state must produce evidence that the defendant engaged in conduct reflecting an intent to sell drugs at some location within 1,500 feet of a public or private elementary or secondary school, a public housing project or a licensed child day care center. *State v. Lewis*, 303 Conn. 760, 771 36 A.3d 670 (2012); see also *State v. Denby*, supra, 235 Conn. at 483, 668 A.2d 682. Mere possession of narcotics with intent to sell at some unspecified point in the future, at some unspecified place is not enough to prove a violation under this statute. *State v. Lewis*, supra, at 770, 36 A.3d 670.

There is no requirement that the state prove that the defendant had actual knowledge that the location where he or she intended to sell drugs was within the proscribed area. Rather, the state must demonstrate only that the defendant intended to sell or dispense those drugs in his or her possession at a specific location, which happens to be within 1,500 feet of a public or private elementary or secondary school, a public housing project or a licensed child day care center. *State v. Hedge*, 297 Conn. 621, 658, 1 A.3d 1051 (2010).

SB 259 simply clarifies this provision of the statute.

I thank the Committee for raising this important legislation and your continued efforts to improve public safety. I urge the Committee's favorable report.